IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

MILTON HOLMES, Individually and On	§	
Behalf of a Similarly Situated Class of	§	
African Americans,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION NO. H-10-4841
	§	
SERVICE CORPORATION	§	
INTERNATIONAL,	§	
	§	
Defendant.	§	

ORDER

On June 28, 2013, defense counsel emailed the court's case manager the information that Milton Holmes, the named plaintiff and proposed class representative, recently died. The court extends condolences to Mr. Holmes's family.

When the named plaintiff dies while a class certification motion is pending, questions must be answered. The case law suggests that the appropriate course is to "respond to the precertification mooting of a class representative's claims by permitting substitution of a new class representative." *In re Nat'l Austl. Bank Sec. Litig.*, 2006 WL 3844463, at *3 (S.D.N.Y. Nov. 8, 2006) (quoting *In re Thornburgh*, 869 F.2d 1503, 1509 (D.C. Cir. 1989)). If a potential member of the putative class is willing and suitable, a motion to substitute or intervene may be appropriate. If it is unclear whether or when such a motion might be filed, another approach is to recognize that the existing certification motion is moot, take the steps required in litigation when a plaintiff dies, and, if appropriate, allow a later-identified new named plaintiff to refile for class certification.

By **July 26, 2013**, plaintiffs' counsel must file a memo of no more than 5 pages addressing these questions and proposing appropriate steps and a schedule. If the proposal is opposed, defense counsel must file a response by **August 9, 2013**.

A hearing is set for August 12, 2013, at 8:30 a.m. in Courtroom 11-B.

SIGNED on July 5, 2013, at Houston, Texas.

Lee H. Rosenthal

United States District Judge